IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 1261 of 2006

RAJ.S.AGRICULTURE MKT. BOARD,JAIPUR & OR
V/S
M/S DANARAM SHREE RAM

Mr. VIJAY BISHNOI, for the appellant / petitioner

Mr. DLR VYAS, for the respondent

Date of Order : 3.9.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

The matter was heard on 16.8.2007, and the judgment was reserved. However, in view of certain doubts in my mind, the matter was ordered to be listed to be mentioned on 22.8.2007, and that day learned counsel for the parties desired to make further submissions. Accordingly, the matter has come up today.

I have heard learned counsel for the parties.

This appeal has been filed against the order of the learned District Judge dated 1.3.2005, setting aside the award dated 2.2.2002, and directing appointment of a sole Arbitrator, and also directing the parties to nominate a common Arbitrator having legal background, and inform the Court so that he may be appointed as Arbitrator.

Arguing the appeal, it was contended by learned counsel for the appellant, that may be that the learned trial Court found the award to be not sustainable, and set it aside, but then the learned trial Court thereafter had no jurisdiction to pass the order appointing a sole Arbitrator as ordered. According to learned counsel for the

appellant, the jurisdiction of the Court extends only to the extent of setting aside the Arbitrator's award, and thereafter the parties are free to begin the arbitration again, if the parties so desire. To support the submission, reliance was placed upon a judgment of Hon'ble the Supreme Court in McDermott International Inc. Vs. Burn Standard Co. Ltd. & Ors. reported in (2006) 11 SCC 181.

On the other hand, learned counsel for the respondent submitted that the Arbitrator's award is practically no award in the eye of law, and the learned trial Court has given detailed reasons for setting aside the award, and in view of the totality of circumstances, the learned trial Court was perfectly right in directing a sole Arbitrator to be appointed as ordered. To support the contention, learned counsel relied upon another judgment of Hon'ble the Supreme Court in State of Rajasthan Vs. M/s.Nav Bharat Construction Co. reported in 2006(1) WLC (SC) Civil 127.

I have considered the submissions. In my view, of course, after going through the entire proceedings of Arbitrator, the award and the impugned order, no fault can be found with the learned trial Court in setting aside the award of the Arbitrator.

The matter then raises for consideration, as to whether the learned trial Court was right in directing a sole Arbitrator to be appointed, or as contended by learned counsel for the appellant, the parties should have been left free to begin arbitration again, obviously again getting the matter referred to the Standing Committee in accordance with Clause 23 of the agreement.

In this regard, I have gone through the judgment of Hon'ble the Supreme Court in McDermott International

Inc.'s case cited by learned counsel for the appellant. A look at that judgment shows that Hon'ble the Supreme Court reviewed the entire scheme of things and in para 52 held as under:

> "52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."

Then as appears from the subsequent discussion in the judgment, that Hon'ble the Supreme Court discussed individual items of the claims of the parties, and proceeded to adjudicate them on merits, and then in para 156 it was observed, that it had proceeded to exercise those powers by exercising jurisdiction vested in it under Article 142 of the Constitution to do complete justice between the parties. In this background, a reading of para 52 quoted above shows, that therein, all that has been held is about the jurisdiction of the Court in the matter of interference or intervention in the arbitral award, but then nothing has been said or held, as to what should be course of action in the event of award being set aside, obviously that occasion did not arise, because Hon'ble the Supreme Court itself proceeded to examine the claim of the parties on merits. However, this much is clear, that this judgment does not prohibit adopting the course as adopted by the learned trial Court.

So far M/s.Nav Bharat Construction Co.'s case is

concerned, in that case for reasons given therein while removing the umpire already appointed, Hon'ble the Supreme Court proceeded to appoint another umpire, a retired Hon'ble Judge of Hon'ble the Supreme Court. It is not shown to this Court, as to what were the terms to appoint umpire, and whether the appointment of Hon'ble retired Judge of Hon'ble Supreme Court was in accordance with those terms.

However, considering the totality of circumstances, and the proceedings of the Arbitrator, as have purportedly been taken, in addition to what has been considered by learned trial Court, it may further be observed, that the proceedings show that the matter was not at all considered as an arbitral Tribunal, rather the file proceeded as if it were being handled by various officers at various levels in the hierarchy. This clearly shows that even if the matter is again sent back to the same Committee, no useful purpose would be going to be served, as the Committee has not shown even any indication about awareness, they are working as arbitrators. In that view of the matter, I do not find any ground to interfere with the impugned order, whereby the person with legal background, was directed to be nominated as arbitrator.

The net result of the aforesaid discussion is that I do not find any ground to interfere with the impugned order. The appeal is, therefore, dismissed.

(N P GUPTA),J.

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